

Sales of tangible personal property, which property, to the extent not first subjected to a use for which it was purchased, as an ingredient or constituent, goes into and forms a part of tangible personal property subsequently the subject of a "sale at retail," are not sales at retail, provided that the property purchased is deemed to be purchased for the purpose of resale. See 86 Ill. Adm. Code 130.210. (This is a GIL.)

September 24, 2001

Dear Xxxxx:

This letter is in response to your letter received August 28, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are retailers in CITY, Illinois. We have to purchase products from national resellers/retailers like AAAI or BBB from time to time to keep us in business.

Most cases, they simply charge Illinois Sales Tax even though we declare ourselves we are registered resellers. They don't want to spend their time to help us. They say they don't want to take any additional administrative burdens for resellers.

When we resell products to customers, we collect sales tax again. We are actually paying sales tax twice for products we buy from national retailers. The current Illinois sales tax return forms do not have provisions for such pre-paid sales taxes. We believe this is not a fair taxing.

We will be grateful if your department could instruct us how to avoid double taxation.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (2000 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (2000 State Bar Edition). Sales of tangible personal property, which property, to the extent not first subjected to a use for which it was purchased, as an ingredient or constituent, goes into and forms a part of tangible personal property subsequently the subject of a "sale at retail," are not sales at retail, provided that the property purchased is deemed to be purchased for the purpose of resale. See 86 Ill. Adm. Code 130.210.

Illinois law requires a Certificate of Resale to contain the information set out in 86 Ill. Adm. Code 130.1405(b), enclosed. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. In addition to the statement, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certification of Resale to Out-of-State Purchaser
 - A) purchaser's registration number with the Illinois Department of Revenue; or
 - B) purchaser's resale number issued by the Department of Revenue; or
 - C) a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

When you purchase items to be resold, you should not have to pay the tax if you provide a valid certificate of resale. However, the Department cannot require a retailer to accept a certificate of resale.

Please note that Section 6 of the Retailers' Occupation Tax Act states, in part, as follows:

If a retailer who has failed to pay retailers' occupation tax on gross receipts from retail sales is required by the Department to pay such tax, such retailer, without filing any formal claim with the Department, shall be allowed to take credit against such retailers' occupation tax liability to the extent, if any, to which such retailer has paid an amount equivalent to retailers' occupation tax or has paid use tax in error to his or her vendor or vendors of the same tangible personal property which such retailer bought for resale and did not first use before selling it, and no penalty or interest shall be charged to such retailer on the amount of such credit. However, when such credit is allowed to the retailer by the Department, the vendor is precluded from refunding any of that tax to the retailer and filing a claim for credit or refund with respect thereto with the Department.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.